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POS-040

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): FRANK F. SOMMERS IV, ESQ. (SBN 109012) SOMMERS & SCHWARTZ LLP 550 California Street, Suite 700 San Francisco, CA 94104 TELEPHONE NO.: 415/955-0925 FAX NO. (Optional): 415/955-0927 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff, NACIO SYSTEMS, INC.		FOR COURT USE ONLY CASE NUMBER: C 07 3481 PJH JUDGE: DEPT.:
UNITED STATES DISTRICT COURT - NORTHERN DISTRICT STREET ADDRESS: 450 Golden Gate Avenue MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME:		
PETITIONER/PLAINTIFF: NACIO SYSTEMS, INC. RESPONDENT/DEFENDANT: GOTTLIEB		
PROOF OF SERVICE—CIVIL Check method of service (only one): <input checked="" type="checkbox"/> By Personal Service <input type="checkbox"/> By Mail <input type="checkbox"/> By Overnight Delivery <input type="checkbox"/> By Messenger Service <input type="checkbox"/> By Facsimile <input type="checkbox"/> By E-Mail/Electronic Transmission		

(Do not use this Proof of Service to show service of a Summons and Complaint.)

1. At the time of service I was over 18 years of age and not a party to this action.

2. My address is (specify one):

a. ☐ Business:b. ☒ Residence:

5 Meadow Avenue, San Rafael, CA 94901

3. On (date): 07/19/2007

I served the following documents (specify):

☒ The documents are listed in the Attachment to Proof of Service **EXHIBIT A TO AFFIDAVIT OF SERVICE**

4. I served the documents on the persons below, as follows:

a. Name of person served: HERBERT GOTTLIEB, Served Personally

b. Address of person served: 10 INDIAN TRAIL COURT, NOVATO, CA 94947

c. Fax number or e-mail address of person served, if service was by fax or e-mail:

d. Time of service, if personal service was used: 4:00 PM

☐ The names, addresses, and other applicable information about the persons served is on the Attachment to Proof of Service—Civil (Persons Served) (form POS-040(P)).

5. The documents were served by the following means (specify):

 a. ☒ By personal service. I personally delivered the documents to the persons at the addressee listed in item 4.
 (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

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- 5 b. ☐ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 4 and (specify one):
- (1) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- (2) ☐ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at (city and state):
- c. ☐ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 4. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- d. ☐ **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 4 and providing them to a professional messenger service for service. (A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.)
- e. ☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 4. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.
- f. ☐ **By e-mail or electronic transmission.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed in item 4. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 07/20/2007

James P. Ruiz

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

(If item 5d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

DECLARATION OF MESSENGER

- ☐ **By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 4. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on (date):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

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EXHIBIT A TO AFFIDAVIT OF SERVICE

1. Temporary Restraining Order re: Protection of Evidence;
2. Summons on SWIdent and Gottlieb;
3. Complaint;
4. Application For Temporary Restraining Order re: Protection of Evidence and Copying;
5. Application For Temporary Restraining Order re: Copyright Infringement;
6. Declaration of Carey Daly, Nacio Senior Vice President;
7. Declaration of Murray Goldenberg, Nacio CFO;
8. Declaration of Mikol Westling, Nacio Director of Operations;
9. Declaration of Betz Burkart, Nacio GASP Project Lead Engineer;
10. Declaration of Dominic Finn, Nacio Facilities Engineer;
11. Declaration of Peter Garza, Evident Data, Inc.;
12. Declaration of Frank Sommers, Nacio counsel;
13. Memorandum of Points and Authorities in Support of Ex Parte TRO and Second TRO;
14. Temporary Restraining Order (Without Prior Notice) to Preserve Evidence and Order to Show Cause re Preliminary Injunction (Proposed);
15. Proposed Temporary Restraining Order (2) Regarding Use of Trade Secrets and Copyright Infringement, and Order to Show Cause re: Preliminary Injunction;
16. Civil Cover Sheet;
17. U.S. District Court Northern California ECF Registration Information Handout;
18. Order Setting Case Management Conference;
19. Letter dated July 5, 2007 to Clerk of US District Court re: Declination of Magistrate Judge;
20. Declination to Proceed Before a Magistrate Judge and Request For Reassignment to a United States District Judge;
21. Reassignment Order;
22. Certification Pursuant to Fed. R. Civ. P. 7.1 and Civ. L.R. 3-16; and
23. Letter dated July 13, 2007 to Judge Hamilton re: TRO.
24. Financial Pacific Insurance Company Bond